SHER TREMONTE LLP

August 12, 2022

BY ECF

The Honorable George B. Daniels
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

The Honorable Sarah Netburn
United States Magistrate Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: ***In re Terrorist Attacks on September 11, 2001***, Case No. 03-md-1570 (GBD)(SN)

Dear Judge Daniels and Judge Netburn:

We write on behalf of our clients, the *Ashton* Plaintiffs, to advise the Court of supplemental authority relevant to the turnover motions of the *Havlish* and *Doe* Plaintiffs, which the *Federal Insurance* Plaintiffs joined, and the *Smith* Plaintiffs (the "MDL Turnover Motions"). ECF Nos. 7763-71 *(Havlish.* and *Doe* motions), 7936-38 (*Federal Insurance* motion); *Smith v. The Islamic Emirate of Afghanistan*, 01-cv-10132 (S.D.N.Y.), ECF Nos. 62-5 (*Smith* motion).[1] Yesterday, the Second Circuit unsealed and posted on its public website a previously decided opinion, *Levinson v. Kuwait Finance House (Malaysia) Berhad*, No. 21-2043 (2d Cir. July 21, 2022). A copy of the redacted slip opinion is attached hereto as Exhibit A.

In *Levinson*, the plaintiffs obtained a default judgment under the Foreign Sovereign Immunities Act (FSIA) against the Islamic Republic of Iran. Under the Terrorism Risk Insurance Act (TRIA), which provides an exception to the FSIA, plaintiffs sought to satisfy that judgment using attachment or execution of "blocked assets" of Iran or any of Iran's "agenc[ies] or instrumentalit[ies]." TRIA § 201(a). Specifically, the *Levinson* plaintiffs (i) moved the district court pursuant to New York's CPLR for turnover of assets belonging to Kuwait Finance House (KFH) Malaysia on the basis that KFH was an "agency or instrumentality" of Iran for purposes of TRIA, and (ii) moved *ex parte* for a writ of execution on KFH's assets. *Levinson*, slip op. at 3. The district court granted the writ of execution without first determining whether TRIA's requirements had been met, including

[1] Subsequent to the May 18, 2022 filing of the *Smith* turnover motion, this Court accepted the *Smith* action as related in a June 10, 2022 order. ECF No. 8086.

whether KFH Malaysia was in fact an "agency or instrumentality" of Iran, and whether the assets were blocked. *Id.* at 5, 9.

The Second Circuit held that the district court's grant of a writ of execution prior to making any findings about "KFH Malaysia's connections to Iran" was "legal error." *Id.* at 12. TRIA, the Circuit concluded, requires that prior to seizing assets through a writ of execution, "a plaintiff must first establish [a] defendant's status as an agency or instrumentality." *Id.* "Put another way, before ordering assets to be seized under TRIA, a district court must make findings as to whether TRIA indeed permits those assets to be seized." *Id.* at 13 (citing *Levin v. Bank of N.Y.*, No. 09-CV-5900, 2011 WL 812032, at *13 (S.D.N.Y. Mar. 4, 2011)). Because "these procedures were not followed," the district court should not have granted a writ of execution because there had "been no showing that KFH Malaysia is in possession of property 'in which the judgment debtor [Iran] has an interest.'" *Id.* (quoting CPLR § 5225(b)).

Levinson's relevance to the MDL Turnover Motions is plain. Each of the *Havlish*, *Doe*, *Federal Insurance*, and *Smith* Plaintiffs sought and obtained writs of execution against assets held in the name of Da Afghanistan Bank (DAB, the DAB Assets) at the Federal Reserve Bank of New York without a prior finding by this Court that TRIA's requirements were satisfied.[2] Indeed, the prerequisites for the grant of a writ still have not been met as the MDL Turnover Motions specifically seek findings under TRIA§ 201(a) that DAB is an "agency or instrumentality" of the Taliban and that the assets are blocked. *See*, *e.g.*, ECF No. 7661, at 27 ("The question remaining for this Court is therefore whether the unlicensed DAB Assets are 'blocked assets of [a] terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party).'"); Apr. 26 Hr'g Tr. 4:21-5:1 (Daniels, *J.*: "In the turnover proceeding, we intend to resolve certain specific issues. . . . [O]ne, we're going to first resolve whether or not these subject funds are available to satisfy judgments against the Taliban. That's the first question to be resolved."), attached hereto as Exhibit B.

Thus, under the Second Circuit's newly released and binding precedent, each writ of execution against the DAB Assets is invalid. And because there is currently no valid writ of execution against the DAB Assets, there is no basis for any of the turnover movants to claim an entitlement to or priority over those Assets. Accordingly, the Court must deny the MDL Turnover Motions, even putting aside the other arguments the *Ashton* Plaintiffs

[2] The *Havlish* and *Doe* Plaintiffs obtained their writs of execution on August 27, 2021, and September 27, 2021, respectively, long before President Biden's Executive Order 14064 blocked the DAB Assets on February 11, 2022.

set forth in their Memorandum of Law in Opposition to the *Havlish* and *Doe* Creditors' Motions for Partial Turnover. ECF No. 7894.[3]

Respectfully submitted,

KREINDLER LLP	SHER TREMONTE LLP
/s/ Megan Benett	*/s/ Theresa Trzaskoma*
Megan Benett	Theresa Trzaskoma

[3] The *Ashton* Plaintiffs, respectfully, reiterate that the Rule 23(b)(1)(B) limited fund class action filed by the *Wodenshek* Plaintiffs offers best procedural mechanism for avoiding the gamesmanship attendant to the ongoing race for priority in this Court and bringing about an equitable distribution of the DAB Assets. *See In re Approximately $3.5 Billion of Assets on Deposit at the Federal Reserve Bank of New York in the Name of Da Afghanistan Bank*, Case No. 22-cv-03228 (GBD) (currently on appeal before the Second Circuit, Case No. 22-965).

EXHIBIT A

21-2043
Christine Levinson et al. v. Kuwait Finance House (Malaysia) Berhad

In the
United States Court of Appeals
For the Second Circuit

August Term, 2021

No. 21-2043

CHRISTINE LEVINSON, INDIVIDUALLY AND AS CONSERVATOR OF THE ESTATE AND PROPERTY OF ROBERT LEVINSON, SUSAN LEVINSON BOOTHE, STEPHANIE LEVINSON CURRY, SARAH LEVINSON MORIARTY, SAMANTHA LEVINSON, DANIEL LEVINSON, DAVID LEVINSON, DOUGLAS LEVINSON,

Plaintiffs-Appellees,

v.

KUWAIT FINANCE HOUSE (MALAYSIA) BERHAD,

Defendant-Intervenor-Appellant.[*]

Appeal from the United States District Court
for the Southern District of New York.
No. 21-4795

[*] The Clerk of Court is respectfully directed to amend the official caption as set forth above.

Loretta A. Preska, District Judge, Presiding.
(Argued March 29, 2022; Decided July 21, 2022)

Before: PARKER, PARK, and ROBINSON, *Circuit Judges*.

Appeal from an order of the United States District Court for the Southern District of New York (Preska, *J.*) granting Appellees' motion for a writ of execution against the assets of Appellant. We **VACATE** the order and **REMAND** for proceedings consistent with this opinion.

DANIEL W. LEVY, McKool Smith P.C., New York, NY, *for Plaintiffs-Appellees.*

CHARLOTTE H. TAYLOR (Noel J. Francisco, Steven T. Cottreau, Jones Day, Washington, D.C.; Fahad A. Habib, Jones Day, San Francisco, CA; Andrew J. Pincus, Charles A. Rothfeld, Mayer Brown LLP, Washington, D.C.; Mark G. Hanchet, Christopher J. Houpt, Cleland B. Welton II, Robert W. Hamburg, Mayer Brown LLP, New York, NY, *on the brief*), Jones Day, Washington, D.C., *for Defendant-Intervenor-Appellant.*

BARRINGTON D. PARKER, *Circuit Judge*:

Under the Foreign Sovereign Immunities Act of 1976 (FSIA), foreign states and their agencies and instrumentalities are immune from suit in the United States, and their property is immune from attachment and execution. *See* 28 U.S.C.

§§ 1604, 1609. These immunities, however, contain exceptions. One exception allows parties to sue foreign state sponsors of terrorism for damages for claims arising out of acts of terrorism. *See* 28 U.S.C. § 1605A(a). Another exception, the Terrorism Risk Insurance Act of 2002 (TRIA), allows parties to satisfy FSIA judgments using attachment or execution against certain property—"blocked assets"—of the foreign state and of any of its "agenc[ies] or instrumentalit[ies]." *See* TRIA § 201(a).

The Levinsons hold an FSIA judgment against the Islamic Republic of Iran. Based on that judgment, the Levinsons moved for a writ of execution against the assets of Kuwait Finance House (KFH) Malaysia in the Southern District of New York. The District Court granted the writ before making any findings as to whether KFH Malaysia is an "agency or instrumentality" of Iran or whether the assets at issue are "blocked." The primary issue in this appeal is whether TRIA permits those assets to be executed upon prior to such findings. Our answer is no.

BACKGROUND

The Levinsons are family members of Robert Levinson, a United States citizen who in early 2007 was captured by an unidentified terrorist organization. The Levinsons sued Iran under the FSIA in the United States District Court for the

District of Columbia, alleging that, among other things, Iranian security forces arrested and for years tortured Levinson, who is now presumed dead.[1] Iran failed to appear in the action, and the District Court entered a $1.5 billion default judgment.

Seeking to enforce their judgment, the Levinsons commenced a turnover proceeding in the Southern District of New York against Citibank, N.A., under New York CPLR Sections 5225 and 5227[2]. The sealed complaint alleged that KFH Malaysia—a foreign retail and commercial bank—is an "agency or instrumentality" of Iran whose assets, including those located in its New York Citibank account, are subject to forfeiture under TRIA. The complaint also alleged that KFH Malaysia and related entities "are acting as agen[cies] or instrumentalities, on behalf, and at the direction, of" the National Iranian Oil Company (NIOC).

[1] The Federal Bureau of Investigation (FBI) investigated the disappearance and "concluded that Iran had attempted to create a false narrative that Robert Levinson was being held captive by an unnamed terrorist organization as part of an effort by Iran to avoid responsibility for Robert Levinson's being taken hostage and his torture." Joint App'x at 5.

[2] The statutes are entitled "Payment or delivery of property of judgment debtor" and "Payment of debts owed to judgment debtor," respectively.

About the same time the Levinsons filed the sealed complaint, they also moved *ex parte* for a writ of execution against the assets contained in KFH Malaysia's Citibank account. The motion contended that those assets were funds held on behalf of an identified shell company used by NIOC. In support of their allegations, the Levinsons submitted the [redacted].[3] [redacted]. The Levinsons also provided a declaration from a banking expert with experience in matters relating to sanctions and terrorist financing who [redacted].

On June 14, 2021, the District Court granted the motion for a writ of execution, directing the U.S. Marshal to "levy and collect" the assets held in KFH Malaysia's Citibank account in the sum of $1.457 billion. The next day, the U.S. Marshals Service served the writ on Citibank. Three days later, Citibank informed KFH Malaysia that it had frozen the Citibank account. As a result, to this day, KFH

[3] The Levinsons have, [redacted] to the District Court.

Malaysia has no control over the funds in that account and alleges that it must turn away customers who seek to make transactions in United States Dollars. Citibank continues to hold these assets.

The next month, KFH Malaysia submitted an emergency order to show cause, seeking to intervene as of right, to vacate the writ of execution, and to file counterclaims against the Levinsons. Among other things, KFH Malaysia submitted a declaration, supported by documents and account records, that undermined the veracity of the Levinsons' allegations, [redacted].

On July 27, 2021, the District Court heard argument on these motions. There, the Levinsons contended that even without the disputed transactions, they had provided sufficient evidence for the court to conclude that KFH Malaysia was an "agency or instrumentality" of Iran. [redacted], setting out the relationship between the Appellant, its related entities, and Iran. In response, KFH Malaysia disputed that relationship, and contended that the Levinsons were not entitled to the writ because, among other reasons, the Levinsons "don't have a finding, a judicial ruling that [Appellant] is an agency or instrumentality."

At the hearing's conclusion, the court orally granted KFH Malaysia's motion to intervene but denied its motion to vacate the writ of execution as "premature in that there are disputed issues of fact." The court did not make any findings as to KFH Malaysia's purported status as an "agency or instrumentality" of Iran and held KFH Malaysia's proposed counterclaims in abeyance. Finally, the court directed the parties to confer on a discovery plan.

This appeal followed. KFH Malaysia challenges both the District Court's June 14th order issuing the writ of execution and its July 27th order[4] denying the motion to vacate the writ. The District Court granted a motion by KFH Malaysia to stay the writ and the District Court proceedings, conditioning the stay on KFH Malaysia's posting a bond equivalent to the amount in the Citibank account.

DISCUSSION

We review a district court's grant of a writ of execution for abuse of discretion. *See CSX Transp., Inc. v. Island Rail Terminal, Inc.*, 879 F.3d 462, 467 (2d Cir. 2018). A district court abuses its discretion when its decision rests on an error of law. *See Zervos v. Verizon N.Y., Inc.*, 252 F.3d 163, 168-69 (2d Cir. 2001).

[4] However, because we vacate the writ, this portion of the appeal is moot, and we do not consider it.

I

As an initial matter, the Levinsons have moved to dismiss this appeal for lack of appellate jurisdiction. We deny that motion.[5]

The courts of appeals have "jurisdiction of appeals from all final decisions of the district courts of the United States." 28 U.S.C. § 1291. Whether a district court's order is appealable under Section 1291 "ordinarily 'depends on the existence of a decision by the District Court that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *In re Roman Catholic Diocese of Albany, N.Y., Inc.*, 745 F.3d 30, 35 (2d Cir. 2014) (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 467 (1978)). Finality requires "'that there be some manifestation' by the district court that it intends the decision to be its 'final act in the case.'" *Nelson v. Unum Life Ins. Co. of Am.*, 468 F.3d 117, 119 (2d Cir. 2006) (quoting *Paliaga v. Luckenbach S.S. Co.*, 301 F.2d 403, 407 (2d Cir. 1962)).

The Levinsons contend that we lack jurisdiction to hear this appeal because the District Court's June 14th order granting the writ of execution is not "final" within the meaning of 28 U.S.C. § 1291. They argue principally that the District

[5] KFH Malaysia has filed a petition for a writ of mandamus in the event that we hold that we lack jurisdiction on direct appeal. *See In re: Kuwait Finance House*, Docket No. 21-2412. Because we do not so hold, we deny that petition.

Court did not manifest an intent that its order be final, as evidenced by its subsequent ruling that the parties would conduct discovery to resolve the factual question whether Appellant is as an "agency or instrumentality." We disagree.

The District Court's order granting the writ "commands" the U.S. Marshal of the Southern District of New York to "levy and collect" Appellant's funds from its Citibank account. Such a command is typically what happens at the end of a lawsuit. If the parties litigate a case involving damages to conclusion, the prevailing party obtains a judgment authorizing law enforcement to seize assets from the losing party and turn them over to the prevailing party. *See* Fed. R. Civ. P. 69 ("A money judgment is enforced by a writ of execution, ..."); *accord Smith v. Fed. Reserve Bank of N.Y.*, 346 F.3d 264, 269 (2d Cir. 2003). That is what occurred here—except there was no verdict, no findings, and no judgment against the party whose assets were seized by the government. Under these circumstances, a court's later observations about a need for discovery do not establish a lack of finality.

This conclusion finds support in caselaw from this Circuit and others. In *Aurelius Capital Partners, LP v. Republic of Argentina*, 584 F.3d 120 (2d Cir. 2009), the Republic of Argentina appealed from a district court's order of execution over certain of its funds under FSIA. We held that we had jurisdiction. *See id.* at 123-24.

Likewise, in *Hewlett-Packard Company v. Quanta Storage, Inc.*, 961 F.3d 731, 741–42 (5th Cir. 2020), the court held that "orders . . . requiring defendants to transfer property to plaintiffs . . . dispose of claims to that property. And these types of orders have long been treated as final and appealable." *See also* 15A FED. PRAC. & PROC. JURIS. § 3910 ("Appeals continue to be permitted from orders that direct immediate execution of judgment or delivery of property to an opposing party . . ."). We see no reason to depart from these holdings. Accordingly, we conclude that we have jurisdiction.

II

We next turn to the District Court's order granting the writ of execution. KFH Malaysia contends that the Levinsons failed to meet their burden to establish their entitlement to the writ and the District Court therefore committed legal error in granting it. We agree.

A

The FSIA provides that foreign states, as well as their agencies and instrumentalities, enjoy absolute immunity from suit and from the attachment and execution of their assets, and these immunities fall away only under "certain express exceptions." *Rubin v. Islamic Republic of Iran*, 138 S. Ct. 816, 822 (2018). One

such exception allows parties to bring suits against foreign states based on acts of terrorism. 28 U.S.C. § 1605A(a). Another such exception, TRIA, allows FSIA judgment holders to enforce their judgments using attachment or execution, and provides that:

> Notwithstanding any other provision of law . . . in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism . . . the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

TRIA § 201(a), Pub. L. No. 107-297, 116 Stat. 2337, codified at 28 U.S.C. § 1610 note. TRIA itself, however, provides no procedures for enforcement. In seeking attachment or execution, therefore, a judgment holder must follow the procedures of state law and, to the extent it applies, federal law. *See* Fed. R. Civ. P. 64, 69.

As noted, the Levinsons obtained a default judgment against Iran under an FSIA exception in the District of Columbia. Next, they sought to enforce that judgment in the Southern District of New York under TRIA by executing on the assets of KFH Malaysia. In so doing, they took two steps. First, they moved to commence a turnover proceeding pursuant to CPLR § 5225(b). That section

provides for the enforcement of money judgments through property not in the hands of the judgment debtor:

> Upon a special proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property in which the judgment debtor has an interest, or against a person who is a transferee of money or other personal property from the judgment debtor, where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor's rights to the property are superior to those of the transferee, the court shall require such person to pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff. Costs of the proceeding shall not be awarded against a person who did not dispute the judgment debtor's interest or right to possession. Notice of the proceeding shall also be served upon the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. The court may permit the judgment debtor to intervene in the proceeding. The court may permit any adverse claimant to intervene in the proceeding and may determine his rights in accordance with section 5239.

Id. Second, the Levinsons moved *ex parte* for a writ of execution. Prior to the conclusion of the turnover proceeding, the District Court granted that motion—before KFH Malaysia had received any notice, and without making any findings about KFH Malaysia's connections to Iran.

That was legal error. To be entitled to attachment or execution under TRIA, a plaintiff must first establish defendant's status as an agency or instrumentality. *See, e.g.*, *In re 650 Fifth Ave. & Related Props.*, 2021 WL 1963803, at *6 (S.D.N.Y. May

17, 2021); *Weininger v. Castro*, 462 F. Supp. 2d 457, 499 (S.D.N.Y. 2006). Put another way, before ordering assets to be seized under TRIA, a district court must make findings as to whether TRIA indeed permits those assets to be seized. *See Levin v. Bank of N.Y.*, No. 09-CV-5900, 2011 WL 812032, at *13 (S.D.N.Y. Mar. 4, 2011) ("In order to determine whether a turnover order can be issued . . . the Court must first determine whether these assets are subject to attachment."). And those findings must be made, as we have noted, in compliance with state law enforcement procedures.

Here, these procedures were not followed. Article 52 permits parties to commence turnover proceedings to enforce money judgments. *See* CPLR § 5225(b). Below, that turnover proceeding commenced, but the District Court granted the relief sought in that proceeding—a writ of execution—before it considered the antecedent issue of whether KFH Malaysia is an agency or instrumentality of Iran or whether the assets at issue are "blocked." Without such findings, there has been no showing that KFH Malaysia is in possession of property "in which the judgment debtor [Iran] has an interest." *Id.* Accordingly, the Levinsons failed to meet the statutory requirements under CPLR § 5225(b) and, consequently, they failed to establish that they were entitled to a writ of execution. *See Mohammad*

Ladjevardian, Liana Corp. v. Republic of Argentina, 663 F. App'x 77, 78 (2d Cir. 2016) (noting that "the district court correctly denied appellants' motion for a writ of execution and turnover order because the Republic does not have an interest in the . . . funds").

In the District Court, the Levinsons argued that they were moving for the writ of execution to prevent the "dissipation of the . . . [a]ssets." Joint App'x at 39. In other words, the Levinsons contend that their objective was to ensure that KFH Malaysia could not withdraw the funds in question before they could be seized. On appeal, KFH Malaysia contends that the Levinsons could have achieved the same result by moving for attachment under CPLR Article 62, rather than for a writ execution. The Levinsons, on the other hand, contend that the "[e]nforcement of money judgments is simply *not* governed by CPLR Article 62."[6] Appellees' Br. at 39.

[6] We note that the TRIA on its face applies only to "blocked assets"—which the statute defines as "asset[s] seized or frozen by the United States under" one of two statutes. TRIA § 201(d)(2)(A). Under that definition, therefore, "blocked assets" are presumably those which a defendant has no power to dissipate. However, based on the Supreme Court's reasoning in *Bank Markazi v. Peterson*, 578 U.S. 212 (2016), we held in *Kirschenbaum v. 650 Fifth Ave. & Related Properties*, 830 F.3d 107 (2d Cir. 2016), that—regardless of whether it has been frozen or seized—any property belonging to the Government of Iran (as well as its agencies or instrumentalities) under the relevant executive orders is "blocked" within the meaning of TRIA, *see id.* at 137-41.

TRIA states that blocked assets "*shall* be subject to execution or *attachment* in aid of execution." § 201(a) (emphasis added). The Levinsons were therefore, consistent with state law, entitled to pursue pre-execution attachment procedures if they chose to do so. Under New York law, which governs attachment proceedings here, *see* Fed. R. Civ. P. 64, "an order of attachment may be granted in any action . . . when . . . the cause of action is based on a judgment, decree or order of a court of the United States." CPLR § 6201(5). Of course, the Levinsons possessed just such an order—a money judgment against Iran. Accordingly, state law permitted them to pursue attachment procedures to, as the Levinsons have put it, "prevent the dissipation of" KFH Malaysia's assets. Joint App'x at 39. Thus, attachment is a possible remedy, among other interim remedies, available to the Levinsons, provided that they meet the applicable requirements.[7]

CONCLUSION

For these reasons, we deny the Levinsons' motion to dismiss the appeal, deny KFH Malaysia's petition for a writ of mandamus, vacate the order granting

[7] Based on the record before us, we express no opinion as to whether the Levinsons are entitled to an order of attachment.

the writ of execution, and remand to the District Court for proceedings consistent with this opinion.

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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In re Approximately $3.5 Billion of Assets on Deposit at the Federal Reserve Bank of New York in the Name of Da Afghanistan Bank

22 Civ. 3228 (GBD)(SN)

Conference

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New York, N.Y.
April 26, 2022
11:00 a.m.

Before:

HON. GEORGE B. DANIELS,

District Judge

-and-

HON. SARAH NETBURN,

U.S. Magistrate Judge

APPEARANCES

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John Does 1 through 7
BY: JOHN THORNTON

(Case called)

JUDGE DANIELS: All right.

Ladies and gentlemen, first, the purpose of this proceeding is so that everyone can get a clear understanding, from your perspective and from our perspective, of how we're proceeding with regard to these funds. My intent is to resolve whatever issues need to be resolved in the current turnover proceedings. Anyone who believes they have any interest, who are a part of the MDL or not part of the MDL, in these funds, if they're not already here in this proceeding, should seek to intervene, because this is where we're going to decide this issue.

I've spoken with Judge Caproni. We are in agreement that we will be moving forward, and it is not likely that any other proceeding will interfere or address the issues that we intend to address in the turnover proceedings prior to our moving forward.

We have a schedule. The most recent letters asked about adjusting the schedule. I'll let Judge Netburn address those issues, but I want to make something really clear. There is no other proceeding that anyone in this room can initiate that will be appropriate to address the issues that we're going to address in the turnover proceeding.

I'll be more direct about this. The filing that was made before Judge Caproni of a separate complaint by plaintiffs

who are already plaintiffs within another case in which they're seeking to obtain funds in support of judgments here is wholly inappropriate. We can address that further, but I do not intend to spend any more of the Court's time or the lawyers' time addressing those issues. As far as I'm concerned, that case will not interfere.

I will give the lawyers in that case an opportunity to consider immediately whether they wish to, within the next 24 hours, move to dismiss that case without prejudice. If that is not done, if that's not a decision that is made by the lawyers in that case, then I will act independently on that case and dismiss that case on its merits. I'll give you 24 hours to decide what to do. It is inappropriate to file a duplicative case that seeks to enforce the same rights based on the same set of facts and to enforce a judgment in a litigation in which the parties have been engaged for years. It is clearly not appropriate for a class action, a putative class action.

The fact is that's one of the reasons why we're all here in an MDL, because presumptively, this is not appropriate for a class action. These are individual claims, and I do not intend to prejudice any party. In the turnover proceeding, we intend to resolve certain specific issues. And I can tell you -- I have my notes here -- one, we're going to first resolve whether or not these subject funds are available to satisfy judgments against the Taliban. That's the first

question to be resolved.

Second, which plaintiffs may recover and obtain money from those funds if those funds are, in fact, legally available to satisfy judgments?

And then discuss and determine what is an equitable distribution of those funds given the number of plaintiffs that are outstanding.

I can tell you right now my inclination is not that an equitable distribution is first come first served. My understanding is it will be resolved one of three ways. If the plaintiffs cannot agree, this Court will independently determine whether these funds are available and what is the appropriate distribution of those funds.

If there is a suggestion by the parties, that the parties agree upon -- and my understanding is that pretty much everyone has agreed to some form of distribution, other than the Ashton plaintiffs -- and again, my reaction to the filing of a separate case before another judge to try to obtain those funds is inappropriate not only because there's a case already pending here -- and that's filed to be related to a case that isn't even part of the MDL and isn't even a 9/11 case -- but also, as a class, the relief that the parties sought in that case advantages no one but themselves. So to say that there is somehow a reasonable representative plaintiff for all the other plaintiffs, quite frankly, from what I've read, I don't know

any other plaintiff in this room who agrees with it.

This was what I consider to be a totally inappropriate attempt to simply advantage one set of plaintiffs. There's no legal basis to do so. There's no legal basis to file a separate complaint, given there's already litigation here, and there's no legal basis to attempt to make that into a class action to represent a class of plaintiffs. We have approximately 10,000 plaintiffs here, and I see no advantage to any of the particularly 9,000 of these plaintiffs who already have judgments or are in the process of obtaining judgments.

Now, I've spoken with Judge Caproni. We all know what the status is of the case that's before her.

One, it is not a 9/11 case.

Two, the plaintiffs don't have a judgment.

Three, the plaintiffs haven't even served in that case.

So that case is not likely to advance in any way that would interfere with the schedule that we anticipate in efficiently and effectively moving forward with to resolve the turnover proceeding.

Judge Caproni and I have been in contact, and we're going to keep in contact with an understanding that if some action needs to be taken in that case that might influence what's going on here, we will discuss it before it happens. But it is not likely that even in a general scenario -- there's

no need for any further orders to prevent that from happening. That case not only is not ripe for this determination of the issues that the second case was attempting to join, there are even questions about whether or not that in and of itself is a viable case.

So everybody should understand that we will be proceeding as we intended to proceed. We will decide those issues in this litigation. I do not anticipate that it will be decided anywhere else, and I am going to indicate right now that no further filings of new complaints in any other court that address the claims raised in this case and before this Court are to be filed without leave of this Court. All right?

I want to make that clear to everybody. Most of the concerns that the parties have raised in their letters and in their actions are concerns that both Magistrate Judge Netburn and I have already discussed, have already factored in, have already considered, and we intend to move forward in order to make a determination as to if and how these funds are to be distributed.

As I say, my intent is to concentrate, to the extent possible, on what would be an equitable distribution of those funds if those funds are available. It is not, as I say, first come first served. If the parties have a suggestion, which is unanimous or which is the majority of the parties, the vast majority, we are willing to consider that.

I don't want to go too far ahead of myself, but I'm even willing to consider, if it's appropriate, appointing a special master to help the parties agree on a proposal that we can consider and determine whether or not it's a reasonable distribution of those funds if those funds are legally appropriate to disburse to the plaintiffs in this case.

So I want to make it real clear there should be no more strategic filings in order to advantage any particular plaintiff. Quite frankly, if I have to make an equitable determination about who gets what, one of the things I may end up factoring in is which parties have been obstructionist with regard to the process and whether or not they should be treated on the same footing with the other plaintiffs.

Let me be blunt about it. The lawyers here are not crabs in a barrel. All right? You're all plaintiffs with the same type of claim and similar interests, but the determination of who is to recover, how much is to be recovered, and where that recovery should come from are individual decisions, for the most part, that have to be made. And we are in the process. We would be probably a good 25 hours ahead of where we are today if we didn't have to deal with this kind of issue in this case and we could continue to concentrate on moving along with the determination of damage awards and final judgments for the parties.

That's my initial statement.

If someone wants to be heard, if you have any questions about that, let me hear it now, because this isn't rocket science that we're dealing with. We're moving forward efficiently, and to the extent that you have a concern that your interests are not being adequately considered, you can let me know.

Yes, Ms. Benett.

MS. BENETT: Megan Benett on behalf of the Ashton plaintiffs and the Wodenshek plaintiffs.

First, I'd like to thank the Court for having us appear in person for this conference and for stating your concerns as to equitable treatment and not sort of having this as a first-come-first-served process.

I do want to be clear we are the people who filed the class complaint. I understand the Court's frustration. I hear what the Court is saying about that. I want to clarify a couple of points.

First of all, the Ashton plaintiffs are not a small minority. We represent 800-some families, 25 percent of the victims killed in the 9/11 attacks. The reason that you see that we haven't joined into what has been described as the framework agreement is that because it is our understanding that that framework agreement would put the families of the Havlish plaintiffs in a position of receiving somewhere north of 80 percent of their judgments, the value of their judgments;

the insurance companies receiving less than 20 percent of the value of their judgments; and the rest of the 2,900-some families receiving something on the order of 1 or maybe 2 percent of the value of their judgments.

JUDGE DANIELS: Well, since it has not been laid out for me or Judge Netburn exactly what that agreement entails, I have not factored any of that in a determination at this point as to whether these funds are available for recovery and how these funds should be distributed.

MS. BENETT: I understand, and that obviously, both in this case and the Owens case, is the major threshold question. And when we had the initial conference in February, I think we had expected that the order, the decision-making would take those dispositive threshold questions first and then the thornier distribution questions as sort of a second-order problem. It appeared to us, based on the schedule in the turnover proceedings, that there was going to be a determination regarding distribution perhaps simultaneous with the question of whether those assets would be available at all.

To be clear, the 23(b)(1)(B) complaint would not advantage the Ashton plaintiffs over anybody else. In fact, the class definition was defined specifically in a way to include everybody who has a claim against those assets and would allow for transparent -- because to the Court's comment about the terms of this framework agreement, we haven't been

presented with a formal term sheet at all either. So my description to the Court is driven, in part, by the fact that this is somewhat opaque and that the 23(b)(1)(B) class complaint seemed to us the most transparent, equitable and judicially overseen vehicle to consider the distribution, should the Court get to the distribution stage.

It also, and I understand that the Court -- I understand the hostility to the vehicle, but it did, to our mind, also provide the Court with a way to take jurisdiction over the entirety of those $3.5 billion in assets. And I hear the Court's representation regarding the Owens case. The fact is that the April 11 decision from Judge Caproni granted an order of attachment and stated that the Owens plaintiffs would have priority.

It may well be that that is not ultimately the case, but given that posture, I think we were not unreasonable to be concerned that there was an ongoing race to the bank. The 23(b)(1)(B) complaint is not unusual as a sort of settlement vehicle. It is specifically designed when there is a limited fund. It is not a question about determination of liability on an individual basis, but it's basically an equitable vehicle that is similar to a bankruptcy proceeding or reverse interpleader. And so the point about filing was simply to provide a vehicle that would treat all of the victims of Taliban-sponsored terrorism in the fairest, most equitable and

most transparent basis.

It was not meant to advantage one family. It was not meant to advantage one law firm. To the contrary; we have consistently, throughout this process, been voicing our concerns about any distribution proceeding that would treat one family who suffered similar, if not identical, losses differently from another family who suffered those same losses.

I believe that everybody, all of the 9/11 families feel that way. I know that in statements to the press, that the lawyers for the Havlish group and Ms. Havlish herself stated that they care about fair treatment here. The 23(b)(1)(B) limited class fund, to our mind, given the competing claims in the Owens case -- and to be clear, the Owens plaintiffs would also be able to participate in a limited class fund. This was not meant to exclude the non-9/11 community. It was meant to be as welcoming as possible to everybody who can establish that they have liability claims against the Taliban and that they've suffered injuries proximately caused by the Taliban's support of mass terrorist attacks.

I don't know if the Court wants to hear anything more about that.

JUDGE DANIELS: No, I don't, because I understand your position and I understand what you attempted to do, but I think it's totally inappropriate in this case.

I'll just give you one example. There's absolutely no reason why that complaint should have been filed before Judge Caproni rather than filed here, and I don't know that there's any party here who is going to say that your filing that, particularly as a class action, somehow advantaged them. It was an attempt to advantage you and disadvantage everyone else. As I say, unless the parties want to spend some more time briefing it and litigating it, I have determined that it is inappropriate and it is appropriate for dismissal. It does not add anything to this litigation, and it does not address any issues that are not being addressed in this litigation. That should settle the issue.

I will give you 24 hours to decide whether or not you want to move to dismiss this case, without prejudice, and if you make such an application within the next 24 hours, I will grant that application. If you do not make such an application, I will move forward to dismiss the case on its merits, because it has no utility. It has absolutely no utility.

Now, if it was motivated out of fear, I understand that; that's what you're basically saying to me. But I can assure you that the process we have in place, the communications that are almost daily at this point that Magistrate Judge Netburn and I have on this issue and the communications that I am now having directly with Judge

Caproni, having the same conversations we're having here about what's going on over there and what's going on over here and whether or not cases belong over here and whether or not anybody can pick and choose and judge shop where they want to file their next claim, that clearly is to be resolved in this MDL litigation.

So the fact is you should let me know whether you want to step aside and focus on the turnover proceeding. If the Owens plaintiffs want to come in and they think they've got an interest and they want to participate in the turnover proceeding, they can. But we intend to move forward and resolve this issues expeditiously, step by step, giving everyone an opportunity to be heard. There's no reason to believe that there's any concern that these issues are going to be resolved somewhere else before they're resolved here.

You made your calculation that this was the way that you wanted to proceed, by filing a separate lawsuit related to Owens. But I want to make clear to you and to everybody else who might want to consider doing the same thing, it's not going to happen. What you will do is not put yourself at the front of the line; you will end up putting yourself at the back of the line by taking those kind of actions.

You know we have a forum to resolve these issues. That is the only forum that exists to resolve these issues currently. If that changes, then we can address it. But I

don't anticipate it's going to change, and I don't anticipate that Judge Caproni is going to take any action in that infant case to interfere with a determination that all of you are going to have an opportunity to participate in and will be resolved here and resolved with the availability and the distribution of those funds, if those funds are available to distribute to the parties.

I don't want to spend a whole lot more time on this, unless you want to spend a lot more of your time on this.

MS. BENETT: No. I just want to correct a couple of things.

First of all, to be clear, the class complaint -- and I hear the Court on that, but I want to make clear it would not have advantaged the Ashton plaintiffs. We would not have been driving the process the way the Havlish attorneys suggested in their filing yesterday. It would have been a judicially overseen process.

JUDGE DANIELS: Well, who would it have advantaged then?

MS. BENETT: All of the families who are victims.

JUDGE DANIELS: Why? They're perfectly satisfied to have this issue resolved in a turnover proceeding.

MS. BENETT: No, no. That's not true. It's not all of the 9/11 families who are perfectly happy to have it satisfied in the turnover proceeding, and it's and it's not all

of the victims of Taliban-sponsored terrorism.

JUDGE DANIELS: Who else are you referring to other than yourself?

MS. BENETT: All of the embassy bombing victims, and to be clear --

JUDGE DANIELS: Who else are you referring to, other than your client?

MS. BENETT: The 25 percent of the 9/11 families that we represent.

JUDGE DANIELS: I'm sorry. I have not received any communication from any other lawyers saying that they are in agreement with what you did.

MS. BENETT: They aren't. They made a different, tactical decision. They wanted to enter into an agreement to hedge their bets and guarantee some modest economic recovery for their clients at a grossly disproportionate value vis-à-vis the insurance companies and the families of a smaller number of victims. That was a different decision.

We made a decision to file this because we thought it wasn't right to disadvantage 2,900 --

JUDGE DANIELS: It should have been filed here. That's my first point. It should have been filed here. You don't get to file it in Wyoming.

MS. BENETT: I hear you.

JUDGE DANIELS: We're in the middle of an MDL that's

been going on for years and involves thousands, as you say, of plaintiffs who have a similar interest in these funds. That is not the appropriate way to proceed. It's not even the efficient way to proceed. It's the inefficient way to proceed, given the fact we are engaged in turnover proceedings.

MS. BENETT: I hear you on that point, and I know the Court recognizes this, but I do want to just state on the record we filed with -- in connection with marking it related to Owens for one reason, which is that that was the only case that had a judicial restraint on the funds. It's an *in rem* proceeding against $3.5 billion. We sent a copy. As the Court knows, we sent a copy of our filings. We filed them the same time in the MDL, and I recognize that this was not how the Court would have --

JUDGE DANIELS: Well, look --

MS. BENETT: But we did not try to hide it. We provided and we trusted --

JUDGE DANIELS: If you don't want to participate here and you want to go sit over there, maybe I'll consider that. But you know that's not what you want to do.

MS. BENETT: We want all of the claims to the $3.5 billion to be consolidated in front of a single court.

JUDGE DANIELS: And that's this Court.

MS. BENETT: And that's fine.

JUDGE DANIELS: There's no reason to believe that

that's supposed to be Judge Caproni.

MS. BENETT: But we only believed that because Judge Caproni had issued the April 11 order restraining the assets and because in connection with the previous effort to have the Owens case brought into the MDL, both courts rejected that. So we gave both courts the complaint. Certainly, in retrospect, I wish that we had marked it as related to both. I'm not sure if that's even an option on the form, now that I'm thinking about it.

JUDGE DANIELS: No, it's not. It would have been an inappropriate option.

MS. BENETT: We gave both courts, we intended to give both courts notice and trust the courts to decide which venue was proper. But the point was always that the 3.5 billion should be adjudicated by a single court, including all those threshold questions that are going to be dispositive of whether this money is available to satisfy any judgments in the first place.

So the filing of the class complaint was meant to, A, have all the adjudications regarding those assets from a single court; and two, as I said, and I -- you know, I hear the Court's response to this. But it was truly because we were concerned about a process that was going to so grossly disproportionately treat 9/11 family members in a way that our -- and I speak to our clients all the time. I know the

same is true even for clients represented by firms that reached a different decision, that the distribution as proposed in the, initially in the turnover proceedings was so deeply troubling to our family members that we did not believe that we could participate in the framework agreement that would have put, you know, treated one person's life as worth 2 percent of the others'.

JUDGE DANIELS: As I usually say, that was a hallway debate that you had with the others. That was not an issue that this Court raised. That is not an issue that this Court adopted. This Court isn't even aware of what the agreement is. The appropriate place to resolve those issues and understand how we were ultimately going to proceed is in this forum, in this courtroom.

MS. BENETT: And I think that that's -- and to the extent that we can do so with judicial oversight and in a transparent manner, that will provide real comfort to the family members. Before the Court's order on Thursday, we had intended to file something noting that we were -- you know, given that the framework agreement had been discussed in papers but without terms, we did intend, before our attention turned to the hearing this morning, to ask the Court to perhaps explore what the terms of that framework agreement looked like, because like I said, our position has been all along that every single family member, all 2,977 families, should be treated

fairly and equitably; that the agreement, as we understood it, would not only fail to do so but would fail to do so in a very dramatic fashion; that the 23(b)(1)(B) class complaint was a vehicle that could take into consideration certain concerns that parties have raised previously of those who have not participated in the USVSST fund, which has made, to be clear, very modest payments to some of the 9/11 family members, that their decision not to participate in that fund could be taken into consideration when fashioning any distribution should the assets be available through the class complaint -- through the limited class fund, rather.

JUDGE DANIELS: And you all have the opportunity to raise those issues before this Court.

JUDGE NETBURN: Right. I think the thing that's most frustrating here is you could say a lot about this MDL, but you could not say that we haven't given everybody an opportunity to be heard. We allow everybody to speak up. We want every family to participate, and filing this class action before Judge Caproni feels like an end run around that process. And that feels inappropriate. I understand that you represent a quarter of the families, but the vehicle that you chose to do this feels completely like you're trying to slot out everybody else when you have never been denied an opportunity to be heard.

I think there's lots of questions about your class

complaint, as evidenced by this conference, as to whether or not you would be adequate counsel, given the opposition so many people have; whether or not your claims are typical; whether or not you can prove that class is a superior method over the MDL. All of those things are very serious questions in my mind and point to a not-well-thought-out choice. And as a result, we have all spent, as Judge Daniels said, dozens and dozens of hours focusing on this charade instead of focusing on the real issue.

So if you want to be heard on what you think is an appropriate distribution, should the Court determine that those funds are available, you will have that opportunity to be heard. But going about it this way leaves a very off taste in our mouths, and it doesn't feel like it's being done in the interest of the class. It feels like it's being done in the interest of your clients because your clients feel like they're not going to get what you think is appropriate. And I'd like to hear about this, but not through this vehicle.

MS. BENETT: Understood.

Just to be clear, Judge, at the February 22 conference, there was the *sua sponte* questions about how anybody without a liquidated damages judgment would have standing to participate in a turnover proceeding as a sort of the threshold matter, and it was at that point that we became concerned. And I hear what the Court is saying about the time

and effort spent thinking about an equitable process here. And again, it's obviously very reassuring to the family members; I'm sure all of them, not just those we represent. But we did have concerns that there would be -- we didn't know how it was going to unfold.

The class complaint was -- and I, again, hear the Court. I can say it was not meant to be an end run at all. To the contrary, and it's not meant to be outside of the MDL. It is a limited class fund that could be available for purposes of resolving claims to the DAB assets within the MDL. It's not -- there are no sort of -- there are no liability questions. I mean depending on how -- and again, the way the class was crafted was meant to be as fair and reasonable as possible given the nature of the claims already asserted by various parties against the Taliban and against the DAB assets.

I don't know that it's worth answering the Court's questions or addressing the Courts' complaints. I will say it's certainly not meant to be a charade. It was meant to be a vehicle that would -- you know, we thought that the Court might welcome as a method for this distribution, given also what the Court said at the February 22 conference about being sort of bound by New York State priority rules and the same -- Judge Caproni echoing the same at the March conference of the Owens hearing.

And the fact is that the Rule 23(b)(1)(B) limited

class fund would actually take jurisdiction over all of the assets and would provide a way for the Court to not have to worry about the built-in inequity of the priority rules in a case like this, where you have a mass terror attack or several terrorist attacks with sort of predetermined damages, judgments issued against the co-joint tortfeasor, would allow the Court a means by which to address this equitably without having to be concerned with the New York State priority rules, which I think it's fair to say certainly didn't contemplate this particular situation but also don't seem to have fair application in an MDL, where the use of those priority rules would sort of force the Court into the position of choosing, you know, one person, one identically situated person over another.

I don't know if it's --

JUDGE DANIELS: Those are tough choices, but this Court is prepared to make those choices. OK? And it's not up to you to make those choices, to reframe it to your advantage. Those issues will have to be addressed. We will address every one of those issues after giving everyone a full opportunity to give their input. Neither you nor any individual lawyer in this room has the ability or the right to define that for this Court or for the rest of these plaintiffs.

All of these plaintiffs have the same interest that you have in making sure that their clients get as much satisfaction of their outstanding damages as you do. That's to

be decided in the same room at the same time for all of the plaintiffs, not to be decided in a separate courtroom, in a separate litigation, while we're trying to figure out what you're doing across the hall.

MS. BENETT: I hear you, and I know I've said this already. I just want to be clear. The proposal that we put forward -- first of all, this Court could oversee a limited fund.

JUDGE DANIELS: You didn't bring it to this Court. You didn't give us any indication --

MS. BENETT: I understand.

JUDGE DANIELS: -- that that was the case. You gave us the opposite indication.

MS. BENETT: My point is that this Court, of course, could take jurisdiction over that if it chose to, but I just want to clarify that it would not advantage the family members we represent over somebody else. To the contrary, it is currently the only, the only vehicle, procedural vehicle we see that would not do that.

JUDGE DANIELS: Thank you.

MS. BENETT: I'm sorry. I just wanted to clarify that the proposed limited class fund would not, in fact, advantage -- well, that's not -- it would advantage -- it would be more advantageous to the 2,930 non-Havlish family members than strict application of New York priority rules, but it

would not be more advantageous to the family members we represent vis-à-vis all of the other family members of those killed and injured in Taliban-sponsored terrorist attacks.

I understand, and I've heard both of the judges express your displeasure and believe that this was gamesmanship. I want to be clear. We filed this in order to treat every family that was a victim of a Taliban-sponsored terrorist attack on an equal and fair basis, not to advantage our clients, not to advantage certain family members over others and not to advantage us. In fact, a limited class fund would be overseen by the Court. It would not be overseen by the lawyers.

This was not a question about class counsel fees. This was about making sure there was a vehicle, given what we had heard at the two prior hearings, in the Owens case and this case, about the Court's feeling bound by New York State priority rules and given what the contours of this framework agreement, which I understand neither I nor the Court know the specifics of, but I am fairly confident would not have treated family members on a fair and equitable basis.

JUDGE NETBURN: I think Judge Daniels and I both don't want to get too far along on the merits of this class complaint, but to the extent what I'm hearing is that you think filing a class action would obviate the need or the obligation of the Court to consider New York priority rules, why do you

think that? Wouldn't there still be an application of priority at least within the class complaint, or you think that just disappears then and there wouldn't be subclasses, for instance?

MS. BENETT: Do you mind if I -- my cocounsel, Ms. Trzaskoma, who has more familiarity with this process, can tell you why. But there could be an equitable way to treat people based on, for example, what category you fall into. But I do not believe that New York State priority rules would have any application in the -- that basically the $3.5 billion goes into a judicially supervised equitable trust, and then it is for the Court to decide without application.

The only reason New York State priority rules are at issue here is because of Federal Rule of Civil Procedure 69, which says that in the execution of judgments, the Court should look to the law of the state where it's situated. Under a Rule 23(b)(1)(B) limited class complaint posture, however, you're not looking at the execution of judgments. You're looking at the people who have claims. However the Court would define the class, you're looking at people who fall into that class who have claims against that fund. That's why it's an *in rem* proceeding.

I think in the letter last night, one of the parties had said they don't even know who the defendants are, but that's because it's an *in rem* proceeding against these assets themselves, and so New York State priority rules don't come

into play because you're not looking at execution of judgments.

JUDGE DANIELS: All right. Did you want to be heard further on that?

I don't want to spend a lot of time debating backwards. I understand your position. After we have this discussion, as far as I'm concerned, as I always say, we start this litigation anew. I'm not holding this against the parties at this point, but I expect you to conform your conduct in the future consistent with the way this MDL is established and the issues that are supposed to be decided in this MDL. That filing before Judge Caproni is inconsistent with that for a number of reasons that we just discussed.

So as long as you understand and everyone else understands -- this is not just for you; it's for anyone else's benefit who thinks, OK, this is a way that I'm supposed to change the issues that are before the Court and have them decided in the way you want them decided. That is not the way we're going to proceed. Due warning to everyone is that you will do nothing but disadvantage your clients by this kind of conduct in the future rather than advancing the possibility of an equitable distribution of these funds if these funds are, in fact, available.

Yes.

MS. TRZASKOMA: Yes, your Honor.

JUDGE NETBURN: Could you just state your appearance

for the court reporter.

MS. TRZASKOMA: Yes. Apologies.

Theresa Trzaskoma from Sher Tremonte on behalf of the Ashton plaintiffs and the class plaintiffs.

I don't want to tread on ground that Ms. Benett already covered, but I do want to explain what the relief was, is, that we are seeking in the 23(b)(1)(B) class.

This is with the reverse interpleader. It doesn't advantage anyone to be the class plaintiffs. It is seeking an equitable distribution of all the assets, including those that are subject to the attachment order that Judge Caproni issued in Owens.

Prior to our filing of that class action, it appeared -- perhaps we were reading tea leaves, but there were comments on the record in both this MDL and by Judge Caproni that strict priority rules were going to apply, and that is not appropriate in these circumstances.

A Rule 23(b)(1)(B) class action cuts through all of that. It allows the Court to do equity, which is what I hear the Court wants to do. It allows a single court, currently this MDL Court, to take control and jurisdiction over the $3.5 billion and then to determine what is an equitable distribution based on whatever factors all of the individual plaintiffs' lawyers want to make arguments to the Court. It is not controlled by class plaintiffs. It is solely in the Court's

discretion.

And that's the vehicle we brought to -- I realize we brought it to Judge Caproni, which you've made clear was the wrong court. But it was not intended to circumvent anything. It was intended to provide a mechanism for, a procedural mechanism for dealing with New York priority rules, which were never intended to meet this extraordinary circumstance.

Rule 23 makes the New York priority rules irrelevant. It takes us into an equitable process, where New York priority rules don't even have to be considered. It preempts New York priority rules.

So it can argue the right mechanism for this very extraordinary situation.

JUDGE DANIELS: All right.

Before I turn to Magistrate Judge Netburn with regard to -- I know there were some questions and requests about the process and the dates of what things are due -- did anyone else want to be heard before we moved into that?

MR. KREINDLER: Good morning, your Honor.

Very quickly -- jim Kreindler -- and I'm not saying anything about the class action or the specifics, but I did want to just make one comment, your Honor, because we have been together wrestling with this case for 15 years. And even before that, it's a long history, starting with the 1996 effective death penalty and Antiterrorism Act that was

spearheaded by then Senator Biden and Senator Kennedy. And from that time on, when it comes to the states who are sponsors or involved with terror, whether it's Libya or Saudi Arabia or Iran, speaking personally, I have one principle in mind. And that is everyone -- every victim -- should be treated equally. And as your Honors both know, while it took 20 years, ultimately, we got $10 million per death for 270 people from Libya in the Pan Am 103 bombing. And that's been my approach, and from the day or two after 9/11, it's something I've expressed to the clients.

And your Honor is quite right when you identified the fear we have that this approach, equal treatment for everyone, which has been something important to me for these 25, 30 years, might be jeopardized by this, you know, race to file first or obtain writs or judgments first. And while I know it's taken a lot of time, speaking personally, I'm glad we're together, because at least personally, I feel that this commitment that I think we all share is a common theme, and we can achieve it not just with this fund but when we reach the promised land at the end of the case.

So I just wanted to thank your Honors for your time and, at least speaking personally, I am reassured that whatever misconceptions were there we've taken care of, and we're on track to do something good and right.

So thank you.

JUDGE DANIELS: Thank you, Mr. Kreindler.

Does anyone else want to be heard?

MR. CARTER: Your Honor, very briefly. Sean Carter from Cozen O'Connor, your Honor.

There's been a fair amount of discussion today about the framework agreement, and I just want to provide a brief perspective on that for the Court.

There are many of us who recognized that there was a pool of funds here that was unprotected and subject to potential attack from parties outside of the MDL. And at the same time, we recognized the complexity of the issues facing this Court in trying to deal with the turnover issues, including because the procedural posture of claims on behalf of the various plaintiffs, differed wildly, from people who had actual judgments, who had moved for monetary judgments years, ago to people who had only recently filed claims the.

Within all of those issues, many of us sought to reach a range of compromises in that achieving a good result -- perhaps not a perfect result, but a good result -- would also have streamlined this entire process for the Court. So when there's conversations here about what equity demands, what is equitable and what's fair, I think part of the consideration for the rest of us was achieving a good result that simplified issues for the MDL Court and allowing the entire case to go forward.

That's all, your Honor.

JUDGE DANIELS: Yes.

MR. BAUMEISTER: Good morning. I'll be brief also.

JUDGE DANIELS: Put your appearance on the record.

MR. BAUMEISTER: Mich Baumeister, representing the Bauer plaintiffs.

I certainly am responding to Mr. Carter, and while he talks about this was an efficient way, I can tell the Court that my clients -- some of them are listening on the phone today -- were told by other clients that the Havlish plaintiffs would get 1.7 billion, his client would get 500 million. They were the deal people that would take it, and if you didn't agree to sign on, even though you didn't know what you would get as a client, even though you didn't know if there would be money, especially even Owens, if you didn't do it, at the end of the day you would get zero.

Some of my clients have been threatened. I received a letter threatening me, Do the deal. It wasn't about efficiency. It was about lining their pockets and disadvantaging the families.

So that's all I wanted to say.

JUDGE DANIELS: Well, the question of what is an equitable distribution, if that question is to be answered, will be answered by this Court. If all of the plaintiffs have a suggestion or some of the plaintiffs have a suggestion or

some third party has a suggestion for the plaintiffs, the ultimate decision lies with the Court. So I urge you to agree, to the extent that you can agree, on what is, if you can, a joint position. If you cannot, those issues, the disputes between the parties with regard to what is an appropriate recovery for each plaintiff is an individual decision that has to be made by this Court. All right?

Anyone else?

Yes, sir.

MR. SCHUTTY: Thank you, your Honor. John Schutty. I represent a subset of the Ashton plaintiffs.

Your Honor, I want to thank you for your reassuring words. I can advise you that my clients have lived in fear since February 22 when the New York State priority rules were emphasized at that conference, and it was a growing fear among the 9/11 families that the Havlish plaintiffs at that time would take the lion's share of the $3-1/2 billion. So I want to thank your Honor for clarifying that the Court's intent is to make an equitable distribution.

As you may know, I filed a letter, a motion requesting permission to contest the judgment that was entered in favor of the Havlish plaintiffs because that judgment was entered in 2012 based on common law, and under the common law of the state of New York, for example, many of those plaintiffs would not recover money. Many of them would not get solatium damages.

So I'd like the opportunity to address that issue with the Court.

And in addition, I just want to tell your Honor that I think the suggestion that a special master here would help to get together with the plaintiffs' attorneys to ensure an equitable distribution is something that should be thoroughly considered. Both judges sitting on the bench today worked so hard for us, and this issue seems to be a subset of what's going on overall in the litigation. So I just would like you to consider fairness and equity and remove some of the fear of some of the family members.

Thank you.

JUDGE NETBURN: I'll just note that I've received your letter application. I haven't acted on it. We will shortly.

Anyone else want to be heard?

JUDGE DANIELS: Ms. Benett.

MS. BENETT: Just briefly.

JUDGE NETBURN: Sure.

MS. BENETT: Sorry. One final suggestion from us.

I heard Judge Daniels on the 24 hours with respect to our pending class complaint. I'd ask if the Court might let us provide a short letter explanation of how that particular vehicle could work in a proceeding like this, specifically thinking of this now in light of Mr. Schutty's concerns raised in his letter and in his statements, that there is

JUDGE DANIELS: I have no interest in pursuing that option.

MS. BENETT: OK. I was going to offer the opportunity to explain a little bit of the procedural aspects of it.

JUDGE DANIELS: There's nothing that you can say that would convince me that rather than proceed in this MDL under this turnover order, that the alternative would be that we adopt the complaint that you have filed.

MS. BENETT: I hear you, Judge. Thank you.

JUDGE NETBURN: All right. I'm going to turn down the heat a little bit and talk about briefing schedules.

I understand that there's an issue related to the various amici that have filed briefs. I'm going to set a deadline of this Friday, which is April 29, for any other amici who wishes to be heard to file their leave application. I think at this point we have about five, and we will be generous in allowing appropriate amici to be heard if they wish.

So April 29 will be the deadline for any potential other amici, who might be listening in or here in the courtroom, to file any leave application. And I know that the Havlish creditors had proposed a more extensive briefing schedule. The Court really wants to move on this, as I imagine everybody else does. So my proposal is that any opposition that the Havlish and Doe creditors wish to file or a response be set at May 13.

Any objection to that schedule?

All right. Hearing none, the deadline -- we'll issue an order today. Just to put it out on the record, the deadline for any amici who wish to file an amicus brief will be April 29, and anyone who wishes to respond to those amicis, the merits of their briefs, will be due May 13.

All right. Anything further from anyone?

JUDGE DANIELS: All right. We're working hard. We encourage your assistance and your input. It makes a big difference, particularly -- and it's interesting that by the time we read the letters that you've sent us, we've already discussed half the issues that are in your letters, so it gives me some comfort that we're approaching this in the appropriate way and we'll be able to expeditiously make some decisions about this.

Obviously, the Court is not in a position to give any plaintiff a guarantee that they will recover these funds or any funds and the extent to which they will recover. But I guarantee you that our main goal is to make sure that all plaintiffs can recover as much of the available funds as possible in an equitable way.

Now, whether or not we face other legal hurdles with regard to priority or with regard to other issues that might affect that, we will confront them and we will address them. But it is our intent, to the extent, consistent with the law as

we can apply it, to make sure that all plaintiffs get some degree of satisfaction. Obviously, no plaintiff in any case can be made whole. Nobody can bring back a deceased relative. Nobody can undo the damage that has been done, but we are focused on figuring out, and we continue to focus on figuring out, what actual funds might be available, what actual funds could be distributed, and what is a reasonable and equitable way to distribute those funds.

We still seek your guidance on that. We'll give further consideration as we go through the turnover proceedings as to whether or not we should initiate at this point a process, if the parties agree they would like a special master to look at those issues, but I can guarantee you that we will give you a full opportunity to be heard, as we have given you a full opportunity to be heard, on these issues -- the issues of the availability of funds and the issue of who is entitled to some of those funds and what would be the appropriate way to distribute available funds, not just the funds at issue here but any funds.

We know we're setting a framework for any other funds that might be available in the future and the parties will seek a distribution of those funds. So be assured that any concerns that you have about certain issues, the appropriate way to address them is to bring them to the attention of this Court and to have the other side -- anyone who disagrees with your

position -- be able to weigh in in this proceeding, in this MDL proceeding. And we will fairly and, hopefully, efficiently move forward and give you some assurance that although we give no one any guarantees that you will be satisfied with the ultimate result, we can give you assurance that you will all be heard. Your positions will be considered, and we will make the best decision that we can.

My position is always this -- that the best decisions aren't made by smart people. They're made by informed people. Give us the information that you think is compelling, and we will factor it in. When we make mistakes, we usually say, Oh, if I'd only known X. Right?

So keep us informed. To the extent that you genuinely want to assist us, we encourage you to do so. To the extent that you just want to simply advantage your own client, we are deciding these cases on their merits, not on any other basis. So keep that in mind.

I think it was important for us to meet here. If there are other issues that this raises or that come up, bring them to our attention right away. As I say, despite everything else that we're doing, literally we're in contact almost on a daily basis at this point with regard to these issues so we can move forward efficiently and give you a result that maybe not everyone will be total satisfied with, but hopefully a result that you can understand, that is a reasoned judgment,

consistent with the law, as to how you should participate in distribution of funds and what the relationship is between the plaintiffs.

My final reminder is you are all plaintiffs. Your clients are all victims. OK? That's what should be driving everyone here. That's what drives us as we're addressing these issues. Right now, everyone before this Court is on an equal footing, and everyone should consider when you make your arguments whether those arguments support everyone's position or whether those arguments simply support your position or whether those arguments disadvantage some at the expense of others, because that's the first evaluation that I'll have with regard to your conduct, your applications, and your filings.

Remember, this is the forum that we're going to resolve these issues. That's the bottom line of this proceeding. We're going to resolve it here, not before Judge Caproni, not before some other judge in this court, not in some other duplicative proceeding that is to address the same issues that we are already addressing here. Regardless of what any party believes, it is a more efficient, effective and advantageous way for us to proceed.

We've laid out the process and we're going to stick with that process, and as far as I'm concerned, that process is working. It will hopefully, and I'm confident it will, give us the best result that we could possibly reach on behalf of the

plaintiffs and victims that have the true interest in this litigation.

Thank you very much.

Let's move forward, and we will proceed efficiently. If there are any other issues that need to be addressed with regard to any of these claims -- of liability or damages -- obviously, my position is they should be raised with this Court on notice to all the other parties, either jointly or having an opportunity to disagree.

Thank you all very much. And we will continue.

(Adjourned)